

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:NER:MAN:TL-N-4816-99

PLDarcy

date:

to: District Director, Manhattan
Examination Division
Attn: Mr. Lawrence Paduano

from: District Counsel, Manhattan

ject:

[REDACTED]
Tax year ended November [REDACTED], [REDACTED]
Consents to Extend the Statute of Limitations
On Assessment

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This memorandum responds to your request for advice on how the Internal Revenue Service can enter into a valid agreement to extend the statute of limitations on assessment of tax items flowing from [REDACTED], a New York partnership subject to the uniform partnership audit procedures. The advice rendered in this memorandum is conditioned on the accuracy of the facts presented to us. This advice is also subject to National Office review. We will contact you within two weeks of the date of this memorandum to discuss the National Office's comments, if any, about this advice.

ISSUE:

1. Whether the Internal Revenue Service properly designated [REDACTED] to act as tax matters partner of [REDACTED].

FACTS:

THE ADVICE IS RENDERED ON THE BASIS THAT ALL THE REPRESENTATIONS AND FACTS IN THIS MEMORANDUM ARE CORRECT. WE RECOMMEND THAT YOU VERIFY THIS INFORMATION. IF ANY OF THE REPRESENTATIONS AND/OR FACTS ARE INCORRECT OR CANNOT BE SUBSTANTIATED, WE MAY NEED TO MODIFY OUR ADVICE.

The Examination Division is currently auditing the taxable year ended November [REDACTED], [REDACTED] of [REDACTED] (the "Partnership"), a partnership subject to the uniform partnership audit procedures. I.R.C. § 6221 et. seq. The Internal Revenue Service seeks to extend the statute of limitations on assessment for this period. The statute of limitations on assessment for the taxable year ended November [REDACTED], [REDACTED] expires on [REDACTED].

During all relevant periods, the Partnership had only two partners, [REDACTED] and [REDACTED] ("Corporation"). The Corporation was a [REDACTED] percent general partner and [REDACTED] was a [REDACTED] percent limited partner. In memoranda dated July 20, 1999 and August 5, 1999, we advised you that [REDACTED] was the tax matters partner ("TMP") of [REDACTED] (also a partnership subject to the uniform partnership audit procedures).

On its Federal partnership income tax return ("Form 1065") for the taxable year ended [REDACTED], the Partnership designated the Corporation as its TMP. In the past, [REDACTED], in her capacity as an officer, has executed documents on behalf of the Corporation. In [REDACTED], the Corporation merged into another entity, dissolved and no longer exists. At the same time, both the Partnership and [REDACTED] disbanded and transferred their assets to a new public corporate entity. Prior to [REDACTED], the Partnership did not grant anyone authority to extend the statute of limitations on assessment of partnership items pursuant to I.R.C. § 6229(b)(1)(B).

In early [REDACTED], the examination team designated [REDACTED] as the TMP of the Partnership. The examination team relied an internal manual entitled "TEFRA Update 1998" to make this designation of an indirect partner as TMP. See p. 8-8. [REDACTED] has agreed to execute an 872-P as TMP of the Partnership.

We understand that [REDACTED] is a United States citizen who was actively involved with almost all aspects of the various [REDACTED] businesses. We further understand that [REDACTED] has access to the Partnership's records and that none of the Partnership's indirect partners would object to her acting as TMP.

CONCLUSION:

(b)(5)(DP), (b)(7)a

[REDACTED]

DISCUSSION:

Pursuant to I.R.C. § 6229(b)(1)(B) the Internal Revenue Service can extend the statute of limitations with respect to the assessment of partnership items by entering into an agreement with the tax matters partner (or any other person authorized by the partnership in writing to enter into such an agreement) before the expiration of such period.¹ Since the partnership never authorized anyone to extend the statute of limitations, only a TMP can execute a Form 872-P.

Upon its dissolution, the Corporation's designation as the Partnership's TMP terminated. Treas. Reg. § 301.6231(a)(7)-1(iii). I.R.C. § 6231(a)(7) defines the TMP as follows:

- (A) the general partner designated as the tax matters partner as provided in regulations, or
- (B) if there is no general partner who has been so designated, the general partner having the largest profits interest in the partnership at the close of the taxable year involved (or, where there is more than 1 such partner, the 1 of such partners whose name would appear first in an alphabetical listing).

¹ Treasury Regulation § 301.6229(b)-1(T) generally permits a partnership to grant any person or entity the authority to execute a Form 872-P if, and only if, such authority is granted by filing a document executed by all persons who were general partners at any time during the year or years for which the authorization is effective.

If there is no general partner designated under subparagraph (A) and the Secretary determines that it is impracticable to apply subparagraph (B), the partner selected by the Secretary shall be treated as the TMP. (Emphasis added).

Obviously, in this case where no partner exists both I.R.C. § 6231(a)(7)(A) and (B) become impracticable to apply and the Internal Revenue Service must rely, if possible, on the flush language of I.R.C. § 6231(a)(7) to designate a TMP. A question arises when I.R.C. § 6231(a)(7)(A) does not apply and I.R.C. § 6231(a)(7)(B) is "impracticable to apply", may the Internal Revenue Service select an "indirect partner" as a TMP under the catchall provision of the last sentence of section 6231(a)(7). Again, that sentence states, in part, that the "partner selected by the Secretary shall be treated as the TMP." A "partner" is defined, inter alia, as "a partner in the partnership" and "any other person whose income tax liability under subtitle A is determined in whole or part by taking into account directly or indirectly partnership items of the partnership." I.R.C. § 6231(a)(2)(B). As a general partner of [REDACTED] for the tax year at issue, [REDACTED]'s income tax liability is indirectly effected by how the Internal Revenue Service treats the Partnership's tax items (i.e., she is a partner of the Partnership pursuant to I.R.C. § 6231(a)(2)(B)). In PAE Enterprises v. Commissioner, T.C. Memo. 1988-222, the United States Tax Court hinted, but did not conclude, that the Internal Revenue Service may designate an "indirect partner" such as [REDACTED] as TMP.

The dicta in PAE Enterprises finds some support in the Treasury Regulations on who may act as TMP. Specifically, Treasury Regulation § 301.6231(a)(7)-1(q) states:

- (1) In general. The Commissioner will select a partner as the tax matters partner under paragraph (p)(2) or (3)(ii) of this section only if the partner was a partner in the partnership at the close of the taxable year under examination.
- (2) Criteria to be considered. The Commissioner may consider the following criteria in selecting a partner as the tax matters partner:
 - (i) The general knowledge of the partner in tax matters and the administrative operation of the partnership.
 - (ii) The partner's access to the books and records of the partnership.
 - (iii) The profits interest held by the partner..

- (iv) The views of the partners having a majority interest in the partnership regarding the selection.
- (v) Whether the partner is a partner of the partnership at the time the tax-matters-partner selection is made.
- (vi) Whether the partner is a United States person (within the meaning of section 7701(a)(30)).

Pursuant to I.R.C. § 6231(a)(2)(B) [REDACTED] was a partner of the Partnership. Additionally, it appears you have considered the relevant criteria set forth in Treasury Regulation § 301.6231(a)(7)-1(q)(2) for designating a TMP. We understand that you have not completed the audit of the Partnership's 1065 for the tax year ended November 24, [REDACTED].

(b)(5)(DP), (b)(7)a

[REDACTED]

If you issue an FPAA in this case, you should send the FPAA directly to [REDACTED] as TMP of the Partnership. You should also send FPAAs to all the partners as reflected on the K-1s (as updated), even though they no longer exist. Additionally, you should send FPAAs to all the indirect partners (i.e., the partners of [REDACTED]).

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Should you have any questions regarding this matter, please contact Paul Darcy at (212) 264-5473 extension 256.

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